Remarks: Examination Report

1. Section 1 of the Examination Report

Applicant elected group I without traverse.

2. Section 2 of the Examination Report

The basis for rejection of the Claims under 35 U.S.C. 103 is noted.

3. Section 3 of the Examination Report

Claims 1-7, 9-33, and 35-39 were rejected under 35 U.S.C. 103(a) as being unpatentable over Agee (US 6,128,276) in view of Shattil (US 6,331,837).

4. Section 4 of the Examination Report

Claim 8 was rejected under 35 U.S.C. 103(a) as being unpatentable over Agee (US 6,128,276) in view of Shattil (US 6,331,837) and further in view of Raleigh et al (US 5,809,422).

5. Section 5 of the Examination Report

Applicant's arguments with respect to claims 1-33 and 35-39 were considered, but are moot in view of the new grounds of rejection.

6. Section 6 of the Examination Report

The Examiner's action is final.

7. Relied-Upon Reference Shattil (US 6,331,837) Should be Disqualified as Prior Art

The burden of establishing that subject matter is disqualified as prior art is placed on applicant once the examiner has established a *prima facie* case of obviousness based on the subject matter.

8. MPEP 706.02(l)(2) Establishing Common Ownership

In order to be disqualified as prior art under 35 U.S.C. 103(c), the subject matter which would other-wise be prior art to the claimed invention and the claimed invention must be commonly owned at the time the claimed invention was made. See MPEP § 706.02(l) for 35 U.S.C. 102(f)/103 or 35 U.S.C. 102(g)/103 prior art disqualified under 35 U.S.C. 103(c). See MPEP § 706.02(l)(1) for 35 U.S.C. 102(e)/103 prior art disqualified under 35 U.S.C. 103(c).

9. MPEP 706.02(l)(2) Establishing Common Ownership

Section II

The following statement is sufficient evidence to establish common ownership of, or an obligation for assignment to, the same person(s) or organizations(s):

> Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same person, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person.

See "Guidelines Setting Forth a Modified Policy Concerning the Evidence of Common Ownership, or an Obligation of Assignment to the Same Person, as Required by 35 U.S.C. 103(c)," 1241 O.G. 96 (December 26, 2000). The applicant(s) or the representative(s) of record have the best knowledge of the ownership of their application(s) and reference(s), and their statement of such is sufficient evidence because of their paramount obligation of candor and good faith to the USPTO.

The statement concerning common ownership should be clear and conspicuous (e.g., on a separate piece of paper or in a separately labeled section) in order to ensure that the examiner quickly notices the statement.

For example, an attorney or agent of record receives an Office action for Application X in which all the claims are rejected under **35 U.S.C. 103(a)** using Patent A in view of Patent B wherein Patent A is only available as prior art under 35 U.S.C. 102(e), (f), and/or (g). In her response to the Office action, the attorney or agent of record for Application X states, in a clear and conspicuous manner, that:

> "Application X and Patent A were, at the time the invention of Application X was made, owned by Company Z."

This statement alone is sufficient evidence to disqualify Patent A from being used in a rejection under **35 U.S.C. 103(a)** against the claims of Application X.

10. Application 09/347,182 and Patent US 6,331,837 are owned by a common entity

Application 09/347,182 and Patent US 6,331,837 were, at the time the invention of Application 09/347,182 was made, subject to an obligation of assignment to and owned by GenghisComm LLC.

Very respectfully,

Steve Shattil

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